

# DIRECTIVE

## WORKFORCE INVESTMENT ACT

Number: WIAD01-8

Date: October 2, 2001  
69:50:va:4872

TO: WORKFORCE DEVELOPMENT COMMUNITY

SUBJECT: LIMITED ENGLISH PROFICIENCY **(INACTIVE)**

### EXECUTIVE SUMMARY:

#### Purpose:

The purpose of this directive is to transmit federal policy guidance regarding the prohibition against national origin discrimination as it affects persons with limited English proficiency.

#### Scope:

The guidance in this directive applies to all Local Workforce Investment Areas (LWIA) and other Workforce Investment Act (WIA) Title I grant recipients.

#### Effective Date:

This directive is effective on the date of issuance.

### REFERENCES:

- Section 188 of the Workforce Investment Act of 1998
- Federal Register, Part XIII (Volume 66, Number 11), Civil Rights Center; Enforcement of Title VI of the Civil Rights Act of 1964; Policy Guidance on the Prohibition Against National Origin Discrimination as it Affects Persons With Limited English Proficiency; Notice (January 17, 2001)
- Dymally-Alatorre Bilingual Services Act, Government Code Section 7290-7299.8
- WIA Directive WIAD00-4, Subject: Nondiscrimination and Equal Opportunity Procedures (November 16, 2000)

### STATE-IMPOSED REQUIREMENTS:

This directive contains no State-imposed requirements.

### FILING INSTRUCTIONS:

This directive finalizes Draft Directive WIADD-20, issued for comment on August 28, 2001. Retain this directive until further notice.

## **BACKGROUND:**

The Civil Rights Act of 1964 and its implementing regulations provide that no person shall be subjected to discrimination on the basis of race, color, or national origin under any program or activity that receives federal financial assistance. Section 188 of the WIA contains the nondiscrimination and equal opportunity provisions. These provisions prohibit discrimination on the grounds of race, color, religion, sex, national origin, age, disability, political affiliation or belief, or participation in WIA Title I-financially assisted programs and activities, including participation by citizens and noncitizens eligible to participate in Title I programs. The WIA Directive WIAD00-4 provided federal and State requirements regarding nondiscrimination and equal opportunity procedures.

As required by Executive Order 13166, entitled “Improving Access to Services for Persons with Limited English Proficiency,” issued by the President on August 11, 2000, the Department of Labor (DOL) Civil Rights Center (CRC) published policy guidance in the Federal Register (January 17, 2001) regarding the prohibition against national origin discrimination as it affects persons with limited English proficiency. The comment period closed on March 19, 2001. The policy guidance was issued pursuant to the requirements of Title VI of the Civil Rights Act and Section 188 of WIA.

## **POLICY AND PROCEDURES:**

The CRC policy guidance published in the [Federal Register](#) on January 17, 2001, addresses linguistic or language access with respect to the responsibilities of recipients of federal financial assistance in serving persons with limited English proficiency (LEP). The guidance is not intended to create new obligations or requirements, but rather to clarify standards consistent with case law and well-established legal principles under Title VI. Highlights of the guidance include:

- Exclusions, delays or denials of access by LEP persons to programs or activities that receive federal financial assistance may constitute discrimination on the basis of national origin, in violation of Title VI of the Civil Rights Act of 1964 and Section 188 of WIA.
- The WIA Section 188 implementing regulations apply to programs and activities that are part of the One-Stop delivery system and are operated by One-Stop partners listed in WIA Section 121(b).
- In addition, Section 188 applies to State-level agencies that administer, or are financed in whole or in part by WIA Title I funds; LWIA grant recipients; service providers, including eligible training providers; on-the-job training employers; Job Corps contractors and center operators; and other national program recipients.
- State or local “English-only” laws do not relieve an entity from its responsibilities under federal anti-discrimination laws.
- Several examples of case law are provided which indicate that recipients of federal financial assistance must ensure that LEP persons can meaningfully access the federally assisted programs and activities.
- In order to ensure compliance with Title VI and Section 188, recipients must take steps to ensure that eligible LEP persons have meaningful access to the recipients’

programs and services during all hours of operation. The most important step in meeting this obligation is for the recipients to provide the language assistance necessary to ensure such access, at no cost to the LEP person.

- The guidance indicates a number of factors that constitute reasonable steps that recipients should take to ensure reasonable access for LEP persons. Of these, four are considered the most important, and are referred to as the “four-factor analysis:” 1) the number or proportion of LEP individuals eligible to participate or likely to be directly or significantly affected by the program or activity; 2) the frequency of contact a participant or beneficiary is required to have with the program or activity; 3) the nature and importance of the program or activity to the participant or beneficiary; and 4) the resources available to the Title I recipient in carrying out the program or activity.
- Effective programs usually consist of the following four elements: 1) a thorough annual assessment of the language needs of the population to be served; 2) the development and implementation of a written policy on language access; 3) training of staff regarding their responsibilities; and 4) vigilant monitoring. The Federal Register guidance provides in-depth discussions regarding each of the four elements.

Refer to the Federal Register for a complete understanding of the CRC’s guidance.

The [Dymally-Alatorre Bilingual Services Act \(DABSA\)](#) requires that, when state and local agencies serve a “substantial number of non-English-speaking people,” they must employ a “sufficient number of qualified bilingual staff in public contact positions” and must translate documents explaining available services into their clients’ languages. The DABSA establishes specific legal mandates for state agencies, but allows local agencies discretion in establishing the level and extent of bilingual services they provide. It is suggested that LWIAs review the DABSA in conjunction with the CRC guidance in reviewing and revising their policies and procedures regarding services to LEP individuals.

**ACTION:**

Bring this directive to the attention of appropriate staff at the LWIA, the One-Stop centers, and WIA Title I-funded subrecipients.

**INQUIRIES:**

Please direct inquiries about this directive to your regional advisor at (916) 653-6347, or to Georganne Pintar Baldwin, Local Policy Guidance Unit Manager, at (916) 654-7611.

/S/ BILL BURKE  
Chief